

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                         |   |                |
|-------------------------|---|----------------|
| RONALD HORNE            | : | CIVIL ACTION   |
|                         | : |                |
| Petitioner              | : |                |
| vs.                     | : |                |
|                         | : | NO. 09-CV-1562 |
|                         | : |                |
| SUPERINTENDENT FRANKLIN | : |                |
| TENNIS, et al.          | : |                |
|                         | : |                |
| Respondents             | : |                |

**ORDER**

AND NOW, this 2nd day of February, 2010 upon an independent and thorough review of the Petitioner's Petition for Writ of Habeas Corpus and after conducting a de novo review<sup>1</sup> of Magistrate Judge Linda K. Caracappa's Report and Recommendation,<sup>2</sup> Petitioner's Objections thereto, and Respondents' response thereto, it is hereby ORDERED that Petition is REMANDED to Magistrate Judge Caracappa for the sole purpose of considering Petitioner's

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<sup>1</sup> Section 636 of Title 28 of the U.S. Code governs the jurisdiction, power, and temporary assignments of United States Magistrate Judges. Subsection (b)(1) provides:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1).

<sup>2</sup> Judge Caracappa concluded that the Petition should be dismissed because Petitioner failed to file it within the one-year limitations period established under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). (Rep. & Rec. 3 (citing 28 U.S.C. § 2244(d)(1)).) Judge Caracappa further noted that Petitioner had neither alleged nor demonstrated "that any valid circumstances exist[ed] to equitably toll the AEDPA statute of limitations." (Rep. & Rec. 4.)

objections with regard to equitable tolling of the one-year limitations period contained in the AEDPA.<sup>3</sup> In all other respects the Report and Recommendation is APPROVED.

BY THE COURT:

/s/ Thomas M. Golden

THOMAS M. GOLDEN, J.

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<sup>3</sup>In response to Judge Caracappa's recommendation, Petitioner claims, inter alia, that he suffered from a mental illness which prevented him from timely filing his Petition. (Pet. Obj. 3-4.) In support of his claim, Petitioner submits a letter dated July 31, 2009 from Shawna L. McKean, Petitioner's Psychologist at SCI-Rockview, which states that Petitioner suffers from Paranoid Schizophrenia. (Ex. B. to Pet. Obj.) Consequently, under authority provided to the Court by 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), it shall remand this case to the Magistrate Judge to consider the equitable tolling issue in the interest of justice. If Judge Caracappa deems that the Petition is timely filed, the report and recommendation shall also address the Petition on the merits.